

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

20964

97319

FILE: B-184486

DATE: August 1, 1975

MATTER OF: Toll and Henson Company

DIGEST:

Questions whether default determination and subsequent reprourement of items sought under terminated contract were proper are for consideration under Disputes clause of terminated contract. Consequently, General Accounting Office must decline to answer questions in context of bid protest in view of decision of Supreme Court in S&E Contractors, Inc. v. United States, 406 U.S. 1 (1972).

On July 14, 1975, the General Accounting Office received a telefax from Toll and Henson Company (T&H) protesting the default termination of T&H's contract No. DSA700-73-C-5709 with the Defense Supply Agency (DSA) and complaining that it was going to be "assessed for any cost differences" arising out of the reprourement of the items. Further, T&H complained that it was not given an opportunity to bid on the reprourement.

The question whether the default determination was proper is for consideration only under the procedures set forth in the Disputes clause of the terminated contract; similarly, the question whether the items sought were reprocured in a manner reasonably calculated to mitigate any damages DSA might have, even though T&H was excluded from competing under the reprourement, is also for consideration under the Disputes clause. See International Harvester Company, B-181455, January 30, 1975.

Although prior to the decision of the Supreme Court in S&E Contractors, Inc. v. United States, 406 U.S. 1 (1972), we gave limited review, or implied that we would give limited review, to protests of defaulted contractors similar to that made by T&H here (see, for example, B-165884, May 28, 1969; B-171659, November 15, 1971), it is clear that in light of the Court's holding (namely: there is not another tier of administrative review for complaints resolvable under the Disputes clause), these protests are no longer for our consideration. See B-178885, November 23, 1973.

B-184486

Consequently, we must decline to decide the issues in controversy.

BT 7/11/44
Deputy Comptroller General,
of the United States